

Delaware Attorney General Beau Biden
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As you all know, the rule of law is a maxim of equality – everyone subject to the same laws and the same consequences for breaking those laws.

This maxim dictates that, without exception, no one is above the law and no one is below it. That doesn’t just apply to people; it applies to businesses, institutions, elected officials, and the judiciary.

Our nation, like yours, emerged from a revolution. We aspired to build a new government that protected the rights of the people, and we did it by placing our allegiance in our laws rather than our leaders.

John Adams, one of our founding leaders, and the second President of the United States, provided much of the philosophical bedrock on which our government is built. He believed that a balanced government in which each branch – executive, legislative, and judicial – operates independent of the others is the only way to preserve the rule of law.

No branch should perform the functions of another, and in this way, Adams wrote, “it may be a government of laws, not men.” People, Adams knew, were corruptible, especially when given disproportionate authority.

“There is danger from all men,” he wrote, “the only maxim of a free government ought to be to trust no man living with power to endanger the public liberty.”

An independent judiciary is the guardian of this maxim. It is the only system through which the rule of law can function as it should: free from the influences that can corrupt that universal equality.

Creating and sustaining an independent judiciary, committed to enforcing the rule of law, is not a discrete event but rather a continuous process. Even when the foundation has been laid, the obligation to expose abuses and correct the conditions that allowed for them must be ongoing if a judiciary is to retain its independence, effectiveness, and credibility.

In the United States, as in Romania, we work every day to try to achieve these ideals. We try to be vigilant in this effort because, based on our experiences throughout our history and even recently, we know we must.

For example, just last year, not far from my home state of Delaware, a judge in Pennsylvania was sentenced to nearly 30 years in prison after he was found guilty of accepting \$1 million in bribes from the builder of private prisons for juveniles. In exchange for the bribes, he sentenced children as young as 10 years old, many of whom had not committed crimes meriting harsh consequences, to incarceration in these for-profit jails. Not only has this judge been sentenced to a lengthy prison sentence, the Pennsylvania Supreme Court has overturned thousands of convictions he issued because the constitutional rights of the young defendants before him were violated by his choice to apply his own, self-serving rules rather than apply the law.

In the U.S., our willingness – our obligation really – to police our own system is critical to the integrity of that system.

The independence of the U.S. judiciary is supported both by its position as a separate branch of government, subject to checks and balances from the other branches, but also by mechanisms within the judiciary designed to keep it transparent, fair, and credible.

The framework and structure of courts themselves can reflect a shared ethic and reinforce its even application.

For example, in Delaware we are proud to have a structure that differs significantly from our neighbor, Pennsylvania. Since 1897, Delaware's state constitution has mandated that there be a

partisan balance on the bench of each of its courts. This mandate imposes a limit on the number of judges affiliated with any one political party that can be appointed to and sit on each court. Judges in Delaware serve 12-year terms after they have been appointed by the Governor and approved by the Senate. They are not elected or retained by popular vote, helping to safeguard that their decisions are based on law rather than politics, financial influence, or popular will.

In Pennsylvania, on the other hand, judges are elected to all levels of the state's courts, including the Supreme Court. And while almost all judges' names appear on the ballot without a political party affiliation – an attempt to direct voters to choose judges based on merit alone – the reality is that these judges, like all candidates for public office, must raise significant amounts of money in order to fund campaigns to gain the support of voters. Millions of dollars in donations flood the Pennsylvania judicial system every election cycle, and often the perception, unwarranted though it may be, is that justice can be bought – an impression that undermines the public trust in the judiciary as an independent, fair institution that defends their rights.

Clearly, I believe one system goes further than the other to protect the independence of the judiciary. But this also shows that, more than 200 years into the process of governing and reforming, U.S. states still select their judges in different ways, with different results, and, ultimately, different reputations.

And that's why, I submit, Delaware's Supreme Court and its lower courts are among the best in the nation.

It is part of the reason why my small state with about 900,000 citizens is home to over 900,000 corporations, including over 60 percent of Fortune 500 companies.

The bench's history of fairness, speed, and expertise is a significant factor in the decision of so many companies and investors to domicile and do business in Delaware.

It demonstrates that corporations can thrive when the maxim of equality is applied throughout the marketplace. A judicial system in which all businesses, investors and employees are treated fairly bolsters a dynamic and strong economy.

People want to do business on a level playing field – a marketplace defined by fair competition and transparency in which everyone follows the same rules, and faces the same consequences for not doing so. The free marketplace has enough unknown variables – the fairness and consistency with which business is conducted and disputes are adjudicated should not be one of them.

Despite the economic importance of corporate activity in Delaware, though, we cannot – and do not – fail to hold some of our biggest industries accountable for breaking the law. Last month, Delaware joined a \$25 billion national settlement with the nation’s largest mortgage servicers. The settlement was the result of investigations into harmful bank practices that contributed to the U.S. housing crisis, which has sent over 8.2 million homeowners into foreclosure over the past five years.

My office has also filed a lawsuit against the privatized mortgage registry system called MERS that adopted practices that deprive homeowners of the right to identify who owns their mortgage, and therefore their ability to fight back against foreclosure.

Property rights are a fundamental tenet of a free society – a right that John Adams referred to as “surely...as real as liberty.” When Romanian land was returned to its people after your revolution, it was a powerful reclamation of the right of a people to control their own homes and lives. MERS appears to have clouded that right for many Americans. They broke the rules on recording mortgage ownership and now many homeowners have no opportunity to try to save their homes. This is the antithesis of the rule of law: one party succeeds by breaking the rules while the other suffers by following.

The rules matter and there must be real consequences for breaking them, despite how wealthy or powerful the party at fault may be. Under the eyes of the law, such influence is stripped of its force.

I believe that the judges who defend the rule of law and the prosecutors who remain vigilant in its enforcement that make up an independent judiciary are not only upholding the rules – they are helping to establish and perpetuate the maxim of equality and a culture that values protecting it. But they cannot do it alone. For a country to take its place as a partner among nations, its commitment to honest and open government must be as fundamental and universal as the rights its laws seek to protect.

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